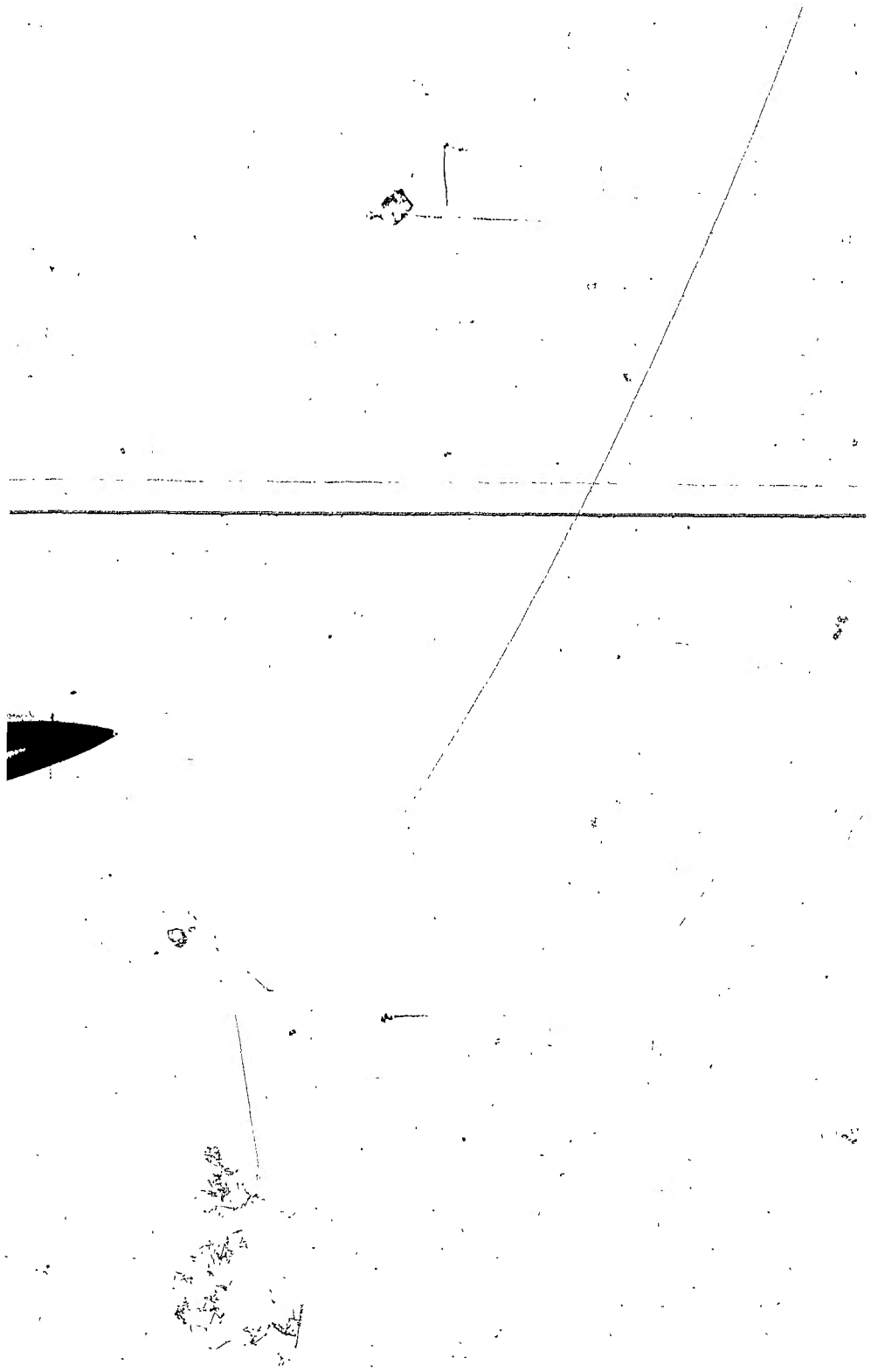


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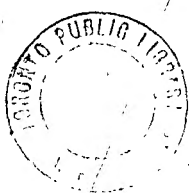
RUPERT LAND, THE COLONY & ITS LIMITS - SYNGE



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Monday, February 23rd, 1863.

SEP 1936

ROYAL GEOGRAPHICAL SOCIETY.

~~A CROWDED Meeting of this Society was held on Monday evening;*~~ Sir Roderick I. Murchison, K.C.B., President, in the Chair.

The first Paper read was—"Rupert Land: the Colony and its Limits." By Captain Millington H. Synge, R.E., F.R.G.S.

THIS paper opened with an allusion to those read before the Society by the same author (*vide* vol. xxii. 'Journal'), which treated of the physical geography of the interior of British North America, as demonstrating the feasibility of a communication across it from ocean to ocean. The features of the country were therein described, and the fact of an unbroken natural navigation was shown to exist between the Atlantic and Pacific; as also, by way of the Mackenzie River, between the Arctic Sea and either of the above oceans. Telegraphic intercourse was now about to be established between Canada and British Columbia by the joint efforts of these co-

* Reprinted from the Abstract given in the Proceedings of the Royal Geographical Society. Vol. 7. No. 2.

lonies, and an open intercourse would inevitably follow.

◦ The intervening country was now used merely for hunting purposes, and it was alleged that the remunerative character of the fur-trade would be destroyed by the opening of the country. Its present holders were accordingly averse to the impending steps in that direction. It was not the intention of Captain Synge to recapitulate his former arguments on the advisability of opening the country, but to complete the examination of the case under the aspects of historical and political geography.

The first mention of Rupert Land—and Rupert Land, whatever that may be, is the country over which alone any claim can be advanced by a corporate body—occurs in the charter granted by King Charles II. to a company styled that of “Adventurers trading to Hudson Bay.” With the Restoration the spirit of maritime adventure had revived, and the prosecution of an enterprise for the discovery of a short passage to the South Sea was again ardently desired. This object had fired the genius of Columbus; had led to nearly all the brilliant enterprises by which America was discovered, seized, and settled; became subsequently an object of research in a more and more northerly direction, until it finally assumed the name of the North-West Passage. To prosecute this search was the object of the applicants for the charter and also of the King. The grant is specified to be

for this purpose, as conducive to the good of the whole people. It is also specified that Rupert Land is to be "a colony," and governed in harmony with the laws of England. This grant is worded so as to convey a monopoly of trade and of land upon the seas and borders of the supposed Passage. Read by this light—that of the day in which the charter was granted—it is obvious that its array of geographical phrases is made for the purpose of legal exhaustion of terms necessary in order to prevent any trespass upon the monopoly; but the whole is bounded by the condition of proximity to the supposititious Passage by the express terms of *coasts and confines*. There is also an *excepting* clause, viz. that the country be not at the time granted to or possessed by other subjects of the King, or of any other Christian prince or state.

The country at the present day attempted to be claimed under these terms embraces, however, the whole head-waters of the Red River and of the Saskatchewan. These countries are in no wise contiguous to Hudson Straits, and they were occupied by the French or by those who inherited the French pretensions, not by the Company of Adventurers.

This enlarged claim rests exclusively upon a very strained interpretation of the word "rivers." The inland navigations of America are by great lakes, and not by rivers. Besides the word "rivers" is sufficiently clearly shown to signify the embouchures necessary to give rights upon the *confines* of the

Straits, first, by the express use of that term; secondly, by the excepting clause; and thirdly, by the total omission of any reference to a land frontier as determined by a watershed. Historical geography entirely corroborates this view, for no exclusive claims to either the trade or land of the interior was set up until the whole of the traders into these regions were amalgamated into one body after the great conflicts with the North-West Company of Canada. During these conflicts the Hudson Bay Company advanced no pretensions of right to a monopoly. All the public instructions both of the Home and Colonial Governments decide that an equal right existed on either side within legal limits, and it was only subsequently to the amalgamation that it became the common interest of all to set up these pretensions under the only document giving semblance to a right on which these enlarged claims could be based. The French posts extended to Fort Piscayac, on the Saskatchewan, besides others seen by Mackenzie as far as Athabasca Lake.

The country required for the purposes of establishing the overland transit, in the first instance, was not within the limits of Rupert Land; but Rupert Land was a grant in trust for the purpose of attaining the objects of that short and rapid communication.

The PRESIDENT said the object of the author of the Paper was to see established free communication between the two great British possessions upon the east and west of North

America. The communication involved other considerations of international law and of the effect to be given to the wording of charters and treaties, upon which few of those present were competent to speak. Fortunately he saw his friend Dr. Travers Twiss near him, and he would ask that gentleman to offer a few observations upon the subject.

Dr. TRAVERS TWISS said, assuming that the Hudson Bay Company had under their charter a power to throw impediments in the way of a passage, whether by telegraph or railway, through the Rocky Mountains, there was still a higher power at home which could remove those impediments; therefore he did not at all despair of overcoming them, assuming that they did exist. In addition to the legal and geographical question, there was also the historical view, which was not precisely as Captain Synge regarded it. The real difficulty which arose in regard to almost all charters and treaties of boundary resulted from the disposition of diplomatists to take a river as a boundary, which, when traced to its head sources, threw everything into confusion. A difficulty of this character arose between ourselves and the United States, when we came to trace the head-waters of the rivers that were to separate the north-east boundaries. In the grant to the Hudson Bay Company, the phrases "land upon the rivers," "territory upon the rivers," were made use of. It has always been understood, both in grants and treaties, when these words are used, that they mean all the land upon the rivers up to their head-waters—up to the high lands where they take their rise. Assuming for the moment that in the grant to the Hudson Bay Company all the land upon the rivers was included, we then had to trace the head-waters of those rivers; and it would be found, precisely as it was discussed at the Treaty of Utrecht, that we should have to commence with Lake Mistassinnic, then come to the Lake Abbitibis, then to the Rainy Lake—the waters of which flow into the Lake of the Woods, and thence into Lake Winnipeg, and finally find their way into Hudson Bay. From the Rainy Lake we must trace a line to the Red Lake, follow that up to Lake Travers, which is at the head of the Red River, in lat. 45°, and thence keep on to the lowest sources of the Saskatchewan, in lat. 48°. Thus we get the real geographical

boundary, or the head-water-line, of the grant to the Hudson Bay Company, inasmuch as all these rivers flow northwards, and find their way, through a most intricate navigation, ultimately into Hudson Bay. Of course the grant was limited, if it proved to conflict with a previous grant, or with land in the occupation of other countries. Besides the Hudson Bay Company there was the *Nouvelle France* and the *Louisiana* companies, which had been formed by the French. A great contest arose between us and the French in this part of the country, and the first was concluded by the Treaty of Ryswick, in which the French King recognised the title of William III. to the throne of England; and in return for that William III. recognised what we call the *uti possidetis*, agreeing that the land should remain as it was possessed by the French, no question of right or title being raised. But when we came to the Treaty of Utrecht, in 1713, the French King agreed, not to cede, but to restore, to Queen Anne "all the Bay and Straits of Hudson, and all the coasts, rivers, &c." Commissioners were to be appointed to mark out the boundaries, not landwards, in regard to the sources of rivers, but coastwards; for the real question was, in fact, to determine the extent of Hudson Bay, that portion of water into which these rivers flowed. Those Commissioners were never appointed: consequently no boundary was ever determined under that treaty between the English and French possessions. Now, the question which Captain Synge raised about the French possessions extending indefinitely northwards, was the great argument used by the United States Government against ourselves in 1846, in connexion with the Oregon boundary, in regard to which it claimed to have succeeded to the French rights in Louisiana, which originally belonged to the French, and who really penetrated as far north as the Athabaska Lake, where Mackenzie, in his first great exploration, discovered the remains of two small French settlements. The Americans claimed 49° as the boundary, alleging that that was the line agreed upon at the Treaty of Utrecht as the boundary between the English and French possessions, and claiming to have succeeded to the French title under that treaty. But in 1763, after the siege of Quebec, when the whole of Canada was ceded to us, the French Governor, the Marquis

de Vaudreuil, named the Red Lake, where the waters commence to flow northwards, as the northernmost point of Canada; and therefore, so far, conceded that the political boundary of the French possessions did not extend higher than the Red Lake. He now came to what really was the meaning of the charter of the Hudson Bay Company. That charter gave the Company all the country, all the coasts, and all the rivers flowing into Hudson Bay and Hudson Straits. Whatever questions might arise as to that definition, about the rivers there was no difficulty whatever, because after the Treaty of Utrecht all the rivers flowing into Hudson Bay were conceded to be British rivers. It seemed to him, therefore, that the historical view was opposed to what Captain Synge had stated, further than the fact of the extension of French settlements of hunters as far as the Lake Athabaska. Nor was the argument quite consistent with the legal interpretation of the word "rivers." At the same time what he had told us was extremely interesting, because of the great prospective importance of that country; it possessed enormous mineral wealth, which would one day be explored and worked.

Captain SYNGE expressed his satisfaction that the question had been taken up in the manner in which it had been dealt with by Dr. Twiss. The opening of the country as a route to the Pacific appeared close at hand, and it was this circumstance that gave so great, immediate, and practical an interest to the subject. He had been greatly struck eleven years ago when first bringing before the Society the physical geography of the country of interior British North America, as proving the feasibility of such a route, and the particulars of the direction-posts and characteristics of the latter, that the discussion which ensued instantly took the form of an attack on the Hudson Bay Company. He subsequently found all those who were in favour of the country were strongly under the impression that the Company was the obstruction really in the way. Now he himself at that time knew the Hudson Bay Company only by name. He had not then examined the charter at all. Satisfied that no such antagonism existed between the assumed proprietary of so magnificent a territory and those who were strenuously seeking to develop its resources to the utmost, he

brought this view under the consideration of the Board of the Company; but without effect. The reply practically amounted to this—that the fur-trade was remunerative and met all their desires. The Company had not, however, been content with a passive opposition. They were, in fact, in many forms the vigorous opponents of every effort to open up the country. The position was, therefore, this:—The Company apparently most interested in the success of the efforts he and others were contending for, were the most resolutely hostile to all those efforts. There appeared, therefore, but one alternative as a solution of this line of conduct. Either we must be entirely mistaken as to the value of the country and of the route, or tenure of that country by the Company was invalid. He had purposely confined himself as much as possible to the geographical investigation of the limits of Rupert Land, and had intentionally glanced as briefly as possible at the historical confirmation of the limits as he had sketched and believed them to be; but he hoped he had shown it to be beyond dispute that Rupert Land was held as a trust only, and that the object of that trust was identical with that which gave its present interest to the question, viz. the opening of a communication with the Pacific. He could not adopt the principle contended for by Dr. Twiss, that the inland navigations of North America came under the category of rivers. The great lakes were not the St. Lawrence. Under any circumstances all the interior country, as he had shown he trusted, sufficiently clearly, however briefly, came under the excepting clause. The Hudson Bay Company evidently had no claim to it; nor, until recently, had they advanced any under their charter. In 1817, when the Hudson Bay and the North-West Companies were brought face to face, the Hudson Bay Company made no pretension to monopoly; they did not call upon the Government to protect them; but the most peremptory instructions were sent by the Home and Colonial Governments that the conflicts of the Companies' servants were to be put a stop to, and all impediments raised on either side against any traders or others of the King's subjects were to be removed. If their monopoly dated from 1803, how could they claim it under their charter? The question could not be avoided, for the settlement of the coun-

try, shown to be imminent, could not take place without the grant and transfer of land. It became indispensably necessary therefore to inquire with whom, if with any one but the Crown, a title to grant lay, and to what that title amounted and over what it extended. To effect a legal transfer there must be a legal title. That title, if legal, extended over Rupert Land. Hence the interest and importance of the question—What are its limits?

The PRESIDENT, in thanking Captain Synge for his communication, said the Geographical Society, happily, were not called upon to settle that question.

Mr. A. K. Isbister, M.A., of the Middle Temple, for many years the authorised and well-known representative of Red River interests, and distinguished for the literary and legal research he has brought to bear upon the matter, as well as for his perfect mastery of the whole subject, attended the meeting of the Royal Geographical Society, at which this paper on Rupert Land was read.

Unfortunately, Mr. Isbister was not afforded the opportunity of taking part in the discussion; but, unwilling to lose the observations to which he conceived the reply of Dr. Twiss to be open, and the weight that would attach to them as emanating from himself, I requested Mr. Isbister to oblige me with them for the purpose of presenting them in an edition of my larger pamphlet. He has been so good as to comply with my request, and has favoured me with the following remarks:—

“I regret that I had not an opportunity of making a few observations on the remarks of Dr. Twiss which appeared to me to be open to exception in several important points.

"The turning point in the history of Rupert's Land was the treaty of Ryswick. The question of the rights of England and France respectively to the territory around Hudson's Bay, had been in dispute for many years before, and this treaty, instead of agreeing to raise 'no question of right or title,' as Dr. Twiss asserts, did precisely the reverse,—it *agreed to raise and to settle both.*

" 'Commissioners shall be appointed,' says the 8th Article of the Treaty, 'on both sides to *examine and determine* the rights and pretensions which either of the said kings hath to the places situated in Hudson's Bay. But the possession of those places which were taken by the French DURING THE PEACE that preceded the present war, and were retaken by the English during the war, shall be left to the French by virtue of the foregoing article.'

" A French historian, Charlevoix, speaking of this treaty, observes, 'Pour ce qui est de la Baye d'Hudson elle nous resta toute entiere *parceque nous en etions les possesseurs actuels.*' And if this view be open to the objection that it is that of a Frenchman, naturally biassed in favour of his own country, here is that of Mr. Bancroft, a perfectly impartial witness, who, in his 'History of the United States,' thus records the result of this treaty: 'In America,' he says, 'France *retained all Hudson's Bay* and all the places of which she was in possession at the beginning of the war; in other words, with the exception of the eastern moiety of

Newfoundland, France retained the whole coast and adjacent islands from Maine to beyond Labrador and Hudson's Bay, besides Canada and the valley of the Mississippi.

"And this brings us to a very curious and remarkable incident in the history of the Hudson's Bay Company, on which Dr. Twiss is altogether silent.

"The Charter under which the Company was incorporated, was granted on the sole authority of King Charles II., without the sanction of Parliament, and thus in direct violation of the well-known Statute of 21 James I. cap. 3, which declared all such monopolies of trade granted under the sole prerogative of the Crown, to be 'altogether contrary to the laws of the realm, and utterly void and of no effect.' To remedy this defect, the Company in 1690 petitioned Parliament for an Act to legalise their charter, and, after some discussion, a Bill was passed confirming the Charter, but 'for seven years only and no longer.' On the expiration of the seven years, the Company applied to Parliament for a renewal of the Act, but WITHOUT SUCCESS; and, incredible as it may appear, they have from that time to this continued to trade upon the unconfirmed grant of King Charles II.—a grant the illegality of which they had themselves practically admitted by applying to Parliament for an Act of the legislature to confirm it.

"But," says Dr. Twiss, "when we come to the Treaty of Utrecht, in 1713, the French king agreed

not to cede but to *restore* to Queen Anne 'all the Bay and "Straits of Hudson and all the coasts and rivers, &c.'" There can be no stronger evidence than the very phrase on which Dr. Twiss insists, that the Treaty of Ryswick *did* confirm the French right to Hudson's Bay, for it is manifest that France could not 'restore' what was not hers to give back. But to WHOM was it RESTORED? To the Hudson Bay Company? No; for they were not even alluded to in any part of the treaty, and their claims and pretensions, whatever they may have been, appear to have been utterly ignored. The 'restoration' was made to the Crown of England, which then, for the first time, acquired an undoubted title to the country by *right of treaty*, and had then for the *first time the undoubted right of granting it away*. In the absence of any specific grant to individuals, the right of British subjects to visit and trade in these regions would follow the national rights acquired by the Sovereign by the cession of the territory, and as enjoyed by the subjects of *France previous to that cession*.

"The Hudson Bay Company obtained no grant either of territory or trade subsequent to the Treaty of Utrecht. They simply squatted down upon the unoccupied territory, and have ever since kept possession of it, but without any right or title to it, other than those at this moment possessed by all British subjects without distinction.

"The claims now put forward by them are, in

fact, based on mere assertion, and nothing more, and vanish on the first test of critical or legal scrutiny. They are invalid not upon one, but on several distinct grounds. The Charter itself, so far as regards its most important provision, the right of exclusive trade, was void from the first, as it was granted without the authority of Parliament; and it continues illegal to this day, as the temporary Act of William and Mary in 1690, confirming it for seven years, has never been renewed. The territories now held under the Charter were claimed, and to a great extent occupied, by the French before the date of the Charter, which expressly excepted "all lands and territories at that time possessed by any other Christian Prince or State"; they were made over to France formally, and with the strongest acknowledgment of her previous right to possess them, within thirty years after that date, and remained to a great extent in the possession of the French until the peace of Utrecht, which finally gave over, and for the *first time*, the whole of Hudson's Bay to England.

"The 'historical view,' then, far from being 'opposed to Captain Synge,' is, on the contrary, opposed to Dr. Twiss, who has here, I am afraid, mistaken both his history and his law."

In further refutation of the defence set up by Dr. Twiss, I would remark that in reality he yields the points at issue.

Whatever stress it might have been attempted to

lay upon the inland connection of the Saskatchewan rivers, of the Assiniboine, and of the Red River, with Lake Winnipeg, and thus through the Nelson and Saskatchewan rivers with Hudson Bay, and with whatever ingenuity it might have been contended that this vast interior *connection of rivers and lakes* was a river, it can under the circumstances of the case avail little or nothing.

First, it was no question of diplomatic or international determination of a boundary, but of a term in a Crown Charter, inserted for a purpose sufficiently evident from the context, as fully explained in the body of the following pages.

Secondly, the extent of grant was expressly limited and defined by condition of proximity to Hudson Bay, which Dr. Twiss wholly passes by in silence.

Thirdly, the country was specifically excluded by the proviso against the possibility of a claim being advanced to the prior possession of any other Christian prince. *Prior*, that is, at whatever time the Company might prosecute discovery in each locality.

Now, *Robert Cavalier de la Sale*, from whose proposal the rapids and village near Montreal derived the name of La Chine, *projected the overland passage in 1679 as the shortest way to China and to Japan*. The very point *his* successors are still contending for.

Charles Marquis de Beauharnois, Lieutenant-General of La Nouvelle France, fostered the prosecution of the same enterprise, and under his auspices

Pierre Gautier de Varennes, penetrated to the Rocky Mountains in 1731.

If farther confirmation were needed as to the limitation of the geographical terms to the confines of the suppositious straits and to Hudson's Bay, as well as to the fact that this was at the time perfectly well understood, it is found in the *omission* of the words *island* or *islands*, and in the *second* Charter of 1674, obtained expressly to confer an island, also suppositious, to which the name of Busse Island was given. Not only was a separate grant deemed necessary to confer the island, but precisely the same conditions of contiguity to it are prescribed even in the grant of *exclusive trade* of "the seas, bays, inlets, rivers, creeks, and sounds" *near it*. It was supposed to be between 57 and 59 N. Lat., and evidently to be thereby, both as to itself and to all *its* contiguities, *too remote* from the "coasts and confines" of the previous grant to be included in the first Charter! *This* island, which had no existence, is *not* granted in trust; and in so far may be held to be a possession of the Hudson's Bay Company. The Charter* runs as follows:—

CHARTER GRANTED BY KING CHARLES II. TO THE HUDSON'S-BAY COMPANY, DATED 13TH MAY, 1674.

"Charles II., by the grace of God, to all to whom these presents shall come greeting—

"Know ye, that we, for divers good causes and considerations

* I am indebted to Mr. A. Isbister for information as to the existence of this Charter and for a copy of it.

thereunto especially moving us, of our own especial grace, certain knowledge, and mere motion, have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the Governor and Company of Adventurers of England, trading into Hudson's Bay, and their successors, all the Island called the Busse Island, lying between fifty-seven and fifty-nine degrees of northern latitude, or thereabouts, and the sole trade and commerce of all the seas, bays, inlets, rivers, creeks, and sounds whatsoever, lying within, near, or about the said island, with the fishery of all sorts of fish, as well whales, sturgeon, and all royal fishes, as other sorts of fish in the seas, bays, inlets, and rivers aforesaid; together with the royalty of the sea and all lakes, creeks, and bays, upon, about, or within the island aforesaid, and the mines royal, as well found as not discovered, of gold, silver, gems, and precious stones, to be found or discovered within the island aforesaid. And we do, by these presents, for us, our heirs and successors, make, create, and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the said island, and of all other premises, saving always the faith, allegiance," &c.

As to the growing importance and the increasing urgency of the question, I may add that indisputable proof has again been afforded of the comparative ease with which the Rocky Mountains may be crossed. Tidings have been received of the safe passage across of 146 emigrants, with a woman and three children, 150 in all, with their cattle and horses. They went by the Leather or Old Jasper House pass, where affluents of the Fraser and Athabasca rivers rise; and they were not even aware that they had crossed the summit until they

perceived that the waters were flowing in the opposite direction!

Moreover, it is now becoming generally known throughout the interior that many parts of the district of the Saskatchewan, though widely separated, are paying gold districts.

A direct road to the Red River settlement, sufficiently removed from the frontier of the Northern States, is also in a fair way of being shortly opened.